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# Ontario Labour Law Review Processes 1990 to 2017

JUNE 2018

**1993**

NDP / BILL 40

**1995**

PC / BILL 7

**2017**

LIBERAL / BILL 148



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## Introduction

### *Labour Law*

Developing and modifying labour laws is contentious, as it pits working people against the business community. Workers want higher wages and improved standards, while business owners do not want governments regulating their power in the workplace. With that in mind, this paper examines labour law review processes in Ontario since 1990. More specifically, this paper will examine:

1. the New Democratic Party's (NDP) Bill 40 which came into law in 1993;
2. the Progressive Conservative Party's (PC) Bill 7 which became law in 1995; and
3. Bill 148, the Fair Workplaces, Better Jobs Act, 2017, which received Royal Assent on November 27, 2017.

When the governing parties initiated the labour law review processes, class conflict became more pronounced as working people mobilized to varying degrees via trade unions and grassroots groups, while big business mobilized and pushed its agenda through the corporate media and the business lobby. With the NDP's Bill 40, working people made progressive gains; however, those were quickly rolled back with the PC government's Bill 7. Most recently, the Liberal's Bill 148 contained some advancements for union and non-union workers.

With each of the three bills – Bill 40, Bill 7 and Bill 148 – there will be an examination of the review panels' composition; the review panels' credibility with labour and business; the effectiveness and thoroughness of the processes; the role of unions and business organizations; the outcome of the reviews and acceptance/criticism by labour and employers; and the longevity of the reforms. The paper also expands on the need to build support for pro-worker reforms and strategies to counteract anti-labour measures.

Ultimately, there are two lessons to be drawn from this paper – both of which will be familiar to those in the labour movement. First, that sustained and organized pressure from below has the ability to push governments to the left and force them to pass pro-worker legislation. Class struggle and direction action have

demonstrated this time and time again. Laws often had to be broken to force governments to act. Governments did not pass laws benefitting ordinary people out of the goodness of their hearts.

Second, that a fractured and unorganized labour movement often results in the election of reactionary governments that curtail labour rights. There is a real danger that the PC Party led by Doug Ford will be elected, meaning that some of labour's recent gains will be rolled back, similar to in 1995. This is not a foregone conclusion as there are many variables at play on the campaign trail. Nonetheless, labour should mobilize and be prepared to fight back against a potential PC government which would be hostile to the interests of working people.

#### Labour Law

Labour laws were established during the post-WWII period to reflect the economy which was increasingly dominated by manufacturing. These manufacturing jobs were premised on the standard employment relationship that consisted of full-time permanent status, good wages and benefits, mostly 9–5 hours of work and one job for life. While manufacturing remains integral to the Canadian economy in the contemporary period, hundreds of thousands of manufacturing jobs have been offshored or eliminated. Many of the new jobs created over the past forty years are precarious ones premised on low-wages, a lack of benefits and part-time, temporary and/or contract status where hours are unpredictable and many people are forced to work multiple jobs to make ends meet.

Existing labour laws do not reflect the changing nature of work and, thus, do not protect those employed in precarious jobs. Ultimately, these workers are left in a highly vulnerable, exploitable and insecure state. It is for these reasons that the labour movement and community organizations have demanded a modernization of labour laws in Ontario for many years. Pressure from these groups forced the Liberal government to announce in 2014 that there would be a review and update to the province's labour laws.

#### *Neoliberalism*

To contextualize the political and economic realities of our

time in general and the changing nature of work in particular, it is important to recognize the trajectory of capitalism and understand how class forces were reconfigured over the past forty years. In response to the global economic crisis that emerged during the 1970s, the state and big business in the United States, Great Britain and Canada launched an ideological program that consisted of cutting taxes for corporations and the wealthiest segments of the population, regulatory liberalization, privatizing public assets, introducing free trade policies, cutting social programs and attacking trade unions.

The shift towards austerity and free market fundamentalism became known as neoliberalism. Neoliberal ideology is entrenched in political discourse and in economic thought throughout much of the world. Over the past four decades in Canada, neoliberal policies restructured work. For instance, thousands of good-paying manufacturing jobs have been lost due to technological change and the offshoring of production to low-wage economies.<sup>1</sup>

The new jobs that have been created are disproportionately precarious ones centred in the service and retail sectors where union representation is sparse, wages are typically low, benefits are virtually non-existent and employment is insecure and part-time.<sup>2</sup> Workers in these sectors have also faced job loss due to technological change. This is apparent in retail, social services, health care and the financial, banking and insurance sectors. In sum, the standard employment relationship which dominated the post-war era has been replaced in many sectors by the non-standard employment relationship in the neoliberal period.

One undeniable development during the neoliberal period is the explosion of wealth and income inequality. Oxfam reports reveal that the wealth of two Canadian billionaires is equivalent to that of the least wealthy 11 million Canadians. Additionally, CEOs in Canada earn 193 times what the average worker earns.<sup>3</sup> Even more troubling is research conducted by the Broadbent Institute re-

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1 "Canada's economy: The new rust belt," *Economist.com*, last modified August 29, 2015, <http://www.economist.com/news/americas/21662567-puzzling-weakness-manufacturing-new-rustbelt>.

2 "Quick Facts About Vulnerable Workers and Precarious Work," *Law Commission of Ontario*, accessed May 20, 2017, <http://www.lco-cdo.org/en/our-current-projects/vulnerable-workers-and-precarious-work/vulnerable-workers-interim-report-august-2012/quick-facts-about-vulnerable-workers-and-precarious-work/>.

3 Susan Noakes, "Rich man, poor man: A closer look at Oxfam's inequality figures," *CBC News*, last modified January 26, 2017, <http://www.cbc.ca/news/business/oxfam-inequity-statistics-1.3937943>.

vealing that from 2005 to 2012, the top 10% of Canadians saw their median net worth grow by 42%, whereas the bottom 10% of Canadians saw their median net worth shrink by 150%.<sup>4</sup>

Furthermore, successive provincial and federal governments have implemented austerity by gutting and scaling back the social safety net. This is particularly evident with Employment Insurance (EI) where regressive reforms made by the federal Liberals and Conservatives have resulted in fewer unemployed persons receiving EI. In addition, social assistance payments have been reduced across Canada. More specifically, in Ontario rates have fallen by 55% since 1994, and the benefits are increasingly difficult to obtain.<sup>5</sup>

Public assets that produced quality jobs and services faced privatization throughout this period, leading to job loss, deterioration of services, and, in many instances, a further transfer of wealth to the few. This is apparent with the privatization of Hydro One in Ontario, which began with the PC Party in the 1990s and continued with the Liberals after the 2014 election, despite over 80% opposition across the province.<sup>6</sup>

In the neoliberal period, provincial and federal governments have frequently used or threatened to use anti-union legislation to undermine worker power and worker solidarity. Examples include declaring certain public service jobs essential as a way to restrict strike action, using back-to-work orders and threatening to implement right-to-work (for less) legislation.

Outcomes from the past four decades of neoliberal restructuring are clear: Canadians are saddled with record-high levels of household and student debt,<sup>7</sup> wages are stagnating and declining in real dollars for most workers,<sup>8,9</sup> an unprecedented 48% of Cana-

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4 Dana Flavelle, "Canada's inequality growing: Stats Can," *Toronto Star*, last modified September 11, 2014, [https://www.thestar.com/business/personal\\_finance/investing/2014/09/11/rich\\_gaining\\_more\\_wealth\\_study\\_shows.html](https://www.thestar.com/business/personal_finance/investing/2014/09/11/rich_gaining_more_wealth_study_shows.html).

5 "Join the Raise the Rates Provincial Week of Action to Confront Poverty in Ontario: Raise Welfare and Disability Rates Now!" *Raise the Rates*, accessed May 20, 2017, <http://raisetherates.ca/announcing-week-of-action-events/>.

6 "Broad Coalition Promises to Step Up Public Opposition to Hydro One Sell-off," *Keep Hydro Public*, accessed May 14, 2017, <https://keephydropublic.ca/broad-coalition-promises-to-step-up-public-opposition-to-hydro-one-sell-off/>.

7 David Parkinson, "Canadian household debt soars to yet another record," *The Globe and Mail*, last modified March 11, 2016, <http://www.theglobeandmail.com/report-on-business/economy/canadians-debt-burden-still-growing-hits-record-in-fourth-quarter/article29172712/>.

8 Kim Pollock, "The promise of Canadian capitalism: Stagnation without end," *Rabble*, last modified May 20, 2015, <http://rabble.ca/blogs/bloggers/progressive-economics-forum/2015/05/promise-canadian-capitalism-stagnation-without-en>.

9 High levels of unemployment lead to greater competition amongst workers, ultimately driving wages down.

dians are living paycheque to paycheque,<sup>10</sup> the number of people using food banks continues to rise at an alarming rate<sup>11</sup> and rates of youth and family homelessness are increasing.<sup>12</sup> Ultimately, expectations of working and middle class people have declined while their fears concerning their increasingly precarious position have grown. Creating an environment premised on low expectations and heightened fear is an effective way to undermine collective action and solidarity. Those most affected by the above-mentioned trends and patterns are Indigenous and racialized people, immigrants and young people. Regarding young people, they are confronting rapidly increasing tuition fees, skyrocketing house prices that are pushing them out of the housing market, increasingly expensive child-care, and wages that are lower in real dollars than those received by their parents' generation at the same age.<sup>13</sup> Consequently, it has been argued that millennials' standard of living will be lower than that of their parents if the current political and economic conditions persist.

### *Fighting Back Against Neoliberalism*

Working people in countries across the globe are coming together to resist and foster progressive change in a multitude of ways despite the daunting challenges outlined above. In Canada and the United States in particular, the Fight for \$15 and Fairness (FF\$15) campaign is a broad movement that has attracted support among vulnerable workers in precarious employment, trade unionists, racialized persons and immigrants, and it has achieved concrete victories for working class people, such as increases to the minimum wage in a number of American states. In Canada, the NDP government in Alberta increased the minimum wage to \$15.00/hr in Octo-

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10 Jonathan Chevreau, "Nearly half of Canadians are living paycheque to paycheque — and that has big consequences for retirement security," *The Financial Post*, last modified September 7, 2016,

<http://business.financialpost.com/personal-finance/retirement/nearly-half-of-canadians-living-paycheque-to-paycheque-and-that-has-big-consequences-for-retirement-security>.

11 "Food bank use on the rise in Canada, with 'drastic' surges in Nova Scotia, territories," *CBCNews.com*, last modified November 15, 2016, <http://www.cbc.ca/news/canada/food-bank-report-2016-1.3850897>.

12 Laurie Monsebraaten, "Family homelessness in Canada on the rise," *The Hamilton Spectator*, last modified February 15, 2016, <http://www.thespec.com/news-story/6308118-family-homelessness-in-canada-on-the-rise/>.

13 "Millennial generation earning less than their parents," *CBCNews.com*, last modified November 28, 2013, <http://www.cbc.ca/news/business/millennial-generation-earning-less-than-their-parents-1.2444341>.

ber of 2018 and the Liberal government in Ontario announced that the minimum wage would be increased to \$15.00/hr by January of 2019.

The minority NDP government in British Columbia announced in 2018 that there would be a hike in the minimum wage to \$15.20/hr by June of 2021. This is a considerable four-year phase-in. The BC Federation of Labour (BCFL), which initiated the Fight for Fifteen in that province, criticized the timeline. Unlike in Ontario, however, where the Ontario Federation of Labour (OFL) built alliances with community groups, the BCFL focussed mainly on lobbying and preparation for the potential of another election in 2018.

# The NDP Government and Bill 40

## 1990 Election

ON SEPTEMBER 6, 1990, the NDP was elected in Ontario for the first time in what is considered to be one of the most stunning events in Canadian electoral history. This result came as a shock to the NDP, their allies in the labour movement, the corporate media, big business and the Liberal and PC parties. Immediately following the election, the Premier-elect, Bob Rae, reassured the business community that the NDP would not introduce a socialist program in Ontario.<sup>14</sup> Those statements foretold the legacy of the NDP government, one in which the party shed some of its social democratic principles while adopting aspects of neoliberal ideology. Furthermore, subsequent to the election, there was also an onslaught of anti-NDP rhetoric from big business and the corporate media:

*It is no exaggeration to say hysterical fear-mongering and sabotage was the order of the day. Launched within the very first year of the new government, the attackers included every manner of business big and small, both Canadian and American-owned, almost all private media, the police (especially in Toronto), landlords and lobbying/government relations firms. Their goal was clear, and they had the money and power to achieve it.<sup>15</sup>*

Corporate blackmail was a recurring theme throughout the NDP's term in power.

## The NDP's Response to the Economic Crisis

UNBEKNOWNST TO THE NDP and broader public was the fiscal crisis that awaited the province following the election. This fiscal crisis included a recession in the early 1990s—that at the time was the most

14 Tim Fowler, "A Crisis of Social Democracy: Organized Labour and the NDP in an Era of Neoliberalism," (master's thesis, Brock University, 2009), 5. [https://dr.library.brocku.ca/bitstream/handle/10464/2808/Brock\\_Fowler\\_Tim\\_2008.pdf?sequence=1&isAllowed=y](https://dr.library.brocku.ca/bitstream/handle/10464/2808/Brock_Fowler_Tim_2008.pdf?sequence=1&isAllowed=y).

15 Gerald Caplan, "The hidden history of Bob Rae's government in Ontario," *The Globe and Mail*, last modified November 15, 2010, <http://www.theglobeandmail.com/news/politics/second-reading/the-hidden-history-of-bob-raes-government-in-ontario/article1314254/>.

severe since the Great Depression—and high interest rates that constrained the party's ability to implement some of the reforms it sought to achieve. Rae developed various policy measures to alleviate worsening conditions in the province. This included the implementation of the Social Contract which was to reduce government expenditures by approximately two billion dollars over three years. The Social Contract forced 900,000 workers in the public sector to take a three-year pay freeze and twelve unpaid leave days,<sup>16</sup> commonly referred to as “Rae Days.” It has been argued that “the Social Contract constituted the most abrupt rupture with Ontario’s postwar history. Never before had public expenditures been so deeply cut... It was single-mindedly focused on public expenditure cuts and marked Ontario’s most explicit adaptation to the requirements of neoliberalism.”<sup>17</sup> To this day, the Social Contract remains a haunting piece of anti-union legislation that strained the relationship between organized labour and the NDP. In addition to Rae Days was the NDP’s failure to implement key platform promises, such as increased daycare funding, public automobile insurance and major reforms to the welfare system.

### **Labour Law Reform: Bill 40**

IN THE NDP’S Throne Speech on November 20, 1990, the party outlined its intent to amend the Ontario Labour Relations Act (OLRA).<sup>18</sup> On March 8, 1991, six months after the election, the NDP turned this promise into a reality by appointing an external tripartite committee to review the OLRA. The committee consisted of three management representatives (lawyers), three union representatives (two lawyers and a national union representative) and an appointed neutral chair (Kevin M. Burkett).<sup>19</sup> The Minister of Labour, Robert W. Mackenzie, identified 30 topics for consideration and provided the committee with the

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16 Leo Panitch and Donald Swartz, “The Social Contract: Labour, the NDP and Beyond,” *Canadian Dimension* 27, no. 6 (1993): 28.

17 Bryan Evans and Ingo Schmidt, *Social Democracy after the Cold War* (Edmonton: Athabasca University Press, 2012), 69.

18 Harish C. Jain and S. Muthuchidambaram, “Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation,” (working paper #385, September 1993), 2.

19 Kevin M. Burkett, “The Politicization of the Ontario Labour Relations Framework in the Decade of the 1990s,” *University of Toronto Library*, 9, [https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/sefton\\_lectures/Sefton-Lecture16th\\_1997-98\\_Burkett.pdf](https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/sefton_lectures/Sefton-Lecture16th_1997-98_Burkett.pdf).

opportunity to submit additional recommendations.<sup>20</sup> Surprisingly, the committee was not provided with staff or a research budget and only had 30 days to report. The business community suggested that the process had a predetermined result and that the topics for consideration were favourable to trade unions.<sup>21</sup>

On April 19, 1991, two diametrically opposed reports were filed with the Minister. The union representatives on the committee produced a 95-page report containing over 60 reform proposals, whereas the management side's 39-page report advocated for status quo. Chair Burkett dissociated himself from the documents and called for a meaningful consultation. Nonetheless, a cabinet submission was prepared on August 7, 1991, and included 60 proposals for reform.<sup>22</sup>

As stated above, the NDP was under siege from corporate interests immediately following the election. The gulf between the NDP and business would continue to widen when the cabinet submission, which called for a communication strategy to neutralize opposition from the business community, was leaked to the public in August 1991.<sup>23</sup> Corporate interests used this leaked information to reinforce and propagate their anti-NDP vitriol.

In order to mitigate this public relations nightmare, the NDP released a discussion paper in November of 1991 that raised areas of reform and the government's preferred options.<sup>24</sup> There were over 20,000 copies distributed and a three-month long consultation process was initiated. Throughout this period, the Minister and his aides met with representatives from 300 groups in 11 communities. The government also received 447 written submissions from disparate interests. This process culminated in Bill 40, which was tabled on June 4, 1992. Subsequent to Second Reading, the all-party committee of the legislature heard over 250 presentations in seven locations during August and September of 1992. Due to the consultation process, the government introduced 55

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20 Harish C. Jain and S. Muthuchidambaram, "Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation," (working paper #385, September 1993), 2.

21 Kevin M. Burkett, "The Politicization of the Ontario Labour Relations Framework in the Decade of the 1990s," *University of Toronto Library*, 9, [https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/sefton\\_lectures/Sefton-Lecture16th\\_1997-98\\_Burkett.pdf](https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/sefton_lectures/Sefton-Lecture16th_1997-98_Burkett.pdf).

22 *Ibid.*, 11.

23 *Ibid.*, 12.

24 Harish C. Jain and S. Muthuchidambaram, "Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation," (working paper #385, September 1993), 4.

amendments to the Bill.<sup>25</sup>

Bill 40 received Royal Assent on November 5, 1992, and came into force on January 1, 1993. The central reforms of the legislation, included:

*general prohibition of the use of strike replacement workers; protection for striking employees, including provisions permitting continuation of benefits during a strike or lockout, and return to work provisions based on employee seniority; automatic access to first contract arbitration; access by unions, for picketing or organizing purposes, to private property to which the public normally has access; access to collective bargaining for domestics, lawyers, architects, dentists and land surveyors; combination of bargaining units, and combined full-time and part-time units as deemed appropriate units; statutory protection against discipline or discharge without just cause during the period after certification or voluntary recognition and before a first agreement is concluded, as well as during the currency of collective agreements, and during a strike or lockout; right to exercise substantive power by arbitrators and the Board, including the power to reinstate on an interim basis, and the explicit power of arbitrators to override specific penalties contained in collective agreements, and to relieve against time limits in the grievance process despite collective agreement provisions to the contrary; successorship protection for contract service sector employees in the event of contract re-tendering, as well as federal-provincial successorship provisions and the removal of certain loopholes in the pre-Bill 40 successorship provisions; the requirement that the Board hold an expedited hearing on an unfair labour practices complaint of discharge or discipline during organizing drives, if requested; the requirement to bargain adjustment plans in the event of closure of part or all of a business or in the event of mass termination.<sup>26</sup>*

The government justified their labour law reforms by stating that there were no significant amendments to the OLRA in 15 years. In addition, the NDP stated that Ontario's laws were out of date compared to other jurisdictions in Canada, such as those in Quebec, Manitoba

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25 Harish C. Jain and S. Muthuchidambaram, "Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation," (working paper #385, September 1993), 5.

26 Harish C. Jain and S. Muthuchidambaram, "Ontario Labour Law Reforms: A Comparative Study of Bill 40 and Bill 7," *Canadian Labour Law and Employment Journal* 311, no. 4 (1996): 322-323.

and B.C. Moreover, the NDP suggested that current legislation did not reflect the changing nature of the workplace and demographic trends in which there was increasing participation in the labour market from women and racialized workers. The OLRA was also said to be inadequate with regard to enforcement mechanisms and remedies.<sup>27</sup> Minister Mackenzie stated to the Canadian Bar Association that “the aim isn’t to turn the world upside down; it’s just to make an existing system work better for everyone... And I reject the model that says we can only compete by lowering wages. That’s a competitive battle we can never win. There will always be some place in the world that can undercut Ontario.”<sup>28</sup> The Minister further justified the proposals by arguing that the Canada-U.S. free trade agreement, exchange rates, increased global competition, interest rates and federal economic policies outweighed any potential impacts of the labour law reforms.<sup>29</sup>

## Responses to the Bill

BILL 40 AND THE submissions to the government from trade unions contained much overlap; however, despite the labour movement’s opinion that the reforms were heading in the right direction, it was argued by labour that the reforms did not go far enough. The OFL stated that the cabinet submission contained significantly more reforms than the discussion paper.<sup>30</sup> Bob White, President of the Canadian Auto Workers (CAW), suggested that the reforms were in no way “revolutionary since most of them are already in existence in other Canadian jurisdictions.”<sup>31</sup>

The unified response from business was to continue the fear-mongering campaign and escalate the hyperbolic rhetoric by suggesting that the sky would fall with the implementation of Bill 40. Magna Corporation CEO Frank Stronach stated that “the premier means well, but in the final analysis we have to be careful when it comes down to wealth creation...wrong time and wrong formula...Scrap it, scrap

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27 Harish C. Jain and S. Muthuchidambaram, “Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation,” (working paper #385, September 1993), 5-7.

28 Ibid, 8.

29 Ibid, 10.

30 Ibid, 11.

31 Ibid, 13.

the whole thing and start over.”<sup>32</sup> The Ontario Chamber of Commerce, the All Business Coalition, the Canadian Federation of Independent Business, the More Jobs Coalition, the Council of Ontario Construction Associations and the Ontario Division of the Canadian Manufacturers’ Association (CMA) expressed similar sentiments towards the legislation.

The CMA identified three central criticisms that were used throughout the labour law review process: 1. Ideological opposition, as the amendments were considered to be pro-union and anti-business; 2. Procedural opposition to the selection of the tripartite committee and only 30 days to complete the initial report; 3. Opposition to the Bill’s substance, as the Association considered the amendments to be cherry-picked from other jurisdictions.<sup>33</sup>

A report produced by Ernst and Young for the Council of Ontario Construction Associations concluded that 295,000 jobs would be lost due to the bill along with \$8.8 billion in investment within five years. Another report indicated that 500,000 jobs would be lost along with \$20 billion in investment.<sup>34</sup> The Ontario Chamber of Commerce suggested that the legislation was “a gun held to the head of the business community.”<sup>35</sup> Furthermore, unidentified billboards depicting Marx, Lenin and Rae were displayed across the province. The “Kill the Bill Before It Kills You” television and flyer advertisement campaign cost approximately \$700,000<sup>36</sup> and contained headlines such as “Say goodbye to your rights” and “Adding to the violence.”<sup>37</sup>

Both the Liberals and PCs opposed Bill 40. The criticisms by the business community informed the two opposition parties’ talking points throughout this period.<sup>38</sup> PC Member of Provincial Parliament (MPP) Ted Arnott suggested that Bill 40 should have been titled “An Act to expand Union Membership and give Unions Power to take over

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32 Harish C. Jain and S. Muthuchidambaram, “Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation,” (working paper #385, September 1993), 13.

33 *Ibid.*, 14.

34 *Ibid.*, 18-19.

35 Judith McCormack, “Comment on the ‘Politicization of the Ontario Labour Relations Framework in the 1990s,’” *Canadian Labour and Employment Law Journal* 325, no. 7 (1999): 336.

36 “Harish C. Jain and S. Muthuchidambaram, “Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation,” (working paper #385, September 1993), 23.

37 Judith McCormack, “Comment on the ‘Politicization of the Ontario Labour Relations Framework in the 1990s,’” *Canadian Labour and Employment Law Journal* 325, no. 7 (1999): 336.

38 “Harish C. Jain and S. Muthuchidambaram, “Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation,” (working paper #385, September 1993), 20-21.

Companies.”<sup>39</sup> The PCs would eventually place 94 amendments on the public record.<sup>40</sup>

In 1994 the NDP also implemented the Pay Equity Act (the Act to Provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women). Statements suggesting that pay equity was a provincial priority were included in the NDP Throne Speech of 1990; however, the Pay Equity Act was not passed until 1994.<sup>41</sup> Unlike Bill 40, the process with regard to pay equity was more comprehensive from the beginning:

*By March of 1991, Juanita Westmoreland-Traoré had been appointed as Ontario Employment Equity Commissioner. In the summer of the same year, the Commissioner established a Consultation Advisory Committee comprised of representatives of the four designated groups that would ultimately be identified in the title of the legislation, as well as business and labour representatives, and employment equity practitioners already active in the province. Between June 25, 1992 and September 7, 1993, more than 100 presentations and 184 written submissions were received. Then a clause-by-clause review by a designated Standing Committee followed, concluding on December 6, 1993, and an Office of the Employment Equity Commissioner established a Public Education Advisory Committee, before being prepared for Third Reading in December and passage in January of 1994.<sup>42</sup>*

With the Act, small businesses were exempt, quotas and statistical standards were avoided, and it was difficult to enforce, meaning that pay equity proponents were not fully satisfied with the final product.<sup>43</sup>

In addition to Bill 40 and the Pay Equity Act was Bill 117, which passed through the legislature in February of 1994. With Bill 117, “Government employees were placed under the jurisdiction of the Act and

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39 Ibid, 22.

40 Ibid, 22.

41 Abigail B. Bakan and Audrey Kobayashi, “Affirmative Action and Employment Equity: Policy and Ideology in Canadian Context,” *Canadian Political Science Association*, 8-9, accessed on April 28, 2017, <https://www.cpsa-acsp.ca/papers-2005/Bakan.pdf>.

42 Ibid, 9.

43 Abigail B. Bakan and Audrey Kobayashi, “Affirmative Action and Employment Equity: Policy and Ideology in Canadian Context,” *Canadian Political Science Association*, 12, accessed on April 28, 2017, <https://www.cpsa-acsp.ca/papers-2005/Bakan.pdf>.

the Ontario Labour Relations Board. The definition of an employee was also broadened so that more classes of managerial staff were included. Bill 117 gave government employees the right to strike, subject to essential services provisions.<sup>44</sup> Furthermore, Bill 91 (the Agricultural Labour Relations Act) passed through the legislature in February of 1994. This Bill's passage meant that agricultural workers had the ability to bargain collectively.<sup>45</sup>

## Conclusion

WHILE BILL 40 was certainly beneficial to organized labour, the law should be considered evolutionary rather than revolutionary.<sup>46</sup> The reforms in the legislation already existed to varying degrees in jurisdictions across Canada, so they were not radical as suggested by business. There were also many recommendations by the labour movement that were left out or were removed from the final piece of legislation. Furthermore, trade unions have gradually been granted more legal protections and rights by the state,<sup>47</sup> meaning that this legislation was a continuation of this trend. Past reforms, included: amendments in 1977 that provided province-wide bargaining in the ICI [Industrial Commercial and Institutional] sector of the construction industry, the 1979 amendments that introduced expedited arbitration to Ontario, the 1980 amendments that required a Rand formula provision in all collective agreements outside the construction industry, the 1983 amendments prohibiting professional strikebreakers, and the 1986 amendments providing for first-contract arbitration.<sup>48</sup>

Labour law reforms were inevitable in Ontario during the 1990s as a political party with a different ideology was elected to govern after decades of one-party rule. Regardless of how the labour law review process

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44 Felice Martinello, "Mr. Harris, Mr. Rae and Union Activity in Ontario," *Canadian Dimension* 26, no. 1 (2000): 20.

45 "A History of Discriminating Against Farm Workers," *Members for Democracy Archive*, accessed April 26, 2017, <http://www.m-f-d.org/article/general/un7j324xf2h.php>.

46 Donald D. Carter, "Labour Law Reform: Radical Departure or Natural Evolution?" *Industrial Relations Centre, Queen's University* 2, (1992), <http://irc.queensu.ca/sites/default/files/articles/carter-labour-law-reform-radical-departure-or-natural-evolution.pdf>.

47 *Ibid.*, 3 and 8.

48 Donald D. Carter, "Labour Law Reform: Radical Departure or Natural Evolution?" *Industrial Relations Centre, Queen's University* 7, (1992), <http://irc.queensu.ca/sites/default/files/articles/carter-labour-law-reform-radical-departure-or-natural-evolution.pdf>.

unfolded, labour was likely to make gains with an NDP government.<sup>49</sup>

Support for the NDP declined significantly during their five years in power. The NDP government managed to strain its relationship with organized labour due to the implementation of the Social Contract, which led many unions to publicly disavow the party. The NDP also capitulated on deficit hysteria invoked by the two opposition parties and the corporate media, culminating in billions of dollars in spending cuts impacting health, education and welfare.<sup>50</sup> While the cuts were being made, the NDP failed to deliver on its campaign promises that included a public auto insurance system and more funding for child care. This angered and isolated many who supported these initiatives. Lastly, fierce opposition from the business community was relentless throughout the period of NDP governance. After alienating large segments of the population and traditional party supporters, electoral defeat for the NDP in 1995 was inevitable.

Lastly, it should be noted that the business community's persistent fear mongering likely did more to push away investment than any piece of legislation tabled by the NDP during this period. However, this was to be expected as business has historically resisted pro-worker legislation. Even if the NDP had undertaken a labour law review process deemed acceptable to business, the response to any reforms or improvements would have remained hyperbolic and over-the-top because labour law reform ultimately deals with questions of power in the workplace.

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49 Judith McCormack, "Comment on the 'Politicization of the Ontario Labour Relations Framework in the 1990s'," *Canadian Labour and Employment Law Journal* 325, no. 7 (1999): 325.

50 Lukin Robinson, "The Ontario election and after," *Monthly Review* 47, no. 9 (1996).

# The Progressive Conservative Government and Bill 7

## 1995 Election

THE SEEDS FOR the eventual PC victory were planted in May of 1994 with the release of the 21-page document titled the “Common Sense Revolution” (CSR). The CSR replicated the rhetoric from the Republican Party in the United States, which proved to be integral to Republican victories in the 1994 midterm election. Specifically, the CSR focused on simple talking points, repeated ad nauseam, around three themes: “an end to employment equity; workfare for welfare; and a package of tax cuts, spending cuts, and a balanced budget.”<sup>51</sup>

If the 1990 provincial election was symbolized by a shift to the centre-left, then the 1995 provincial election was symbolized by a swing to the hard right. On June 8, 1995, the PC Party under the leadership of Mike Harris captured 45% of the popular vote along with 82 of 130 seats in the legislature. The NDP plummeted to 17 seats and 20% support, while the Liberals—who entered the campaign with a large lead in the polls—ended up with only 31% of the vote and 30 seats, four fewer seats than in 1990.<sup>52</sup> The coalition that elected the PC’s, included “disgruntled small-town voters who [were] dismayed by the pace and scope of social change; suburban voters who [feared] for their jobs, [had] watched their purchasing power plummet and [wanted] tax relief; and the so-called Red Tories who [espoused] a more traditional blend of fiscal rectitude and progressive social policies.”<sup>53</sup>

The election of the PC Party placed Ontario at the forefront of neoliberal ideology with its emphasis on small government, fiscal responsibility and low taxes. Of course, small government and reduced taxes were coded language for government-inflicted austerity that would lead to slashed funding for social programs and the elimination of front-line jobs. The Tory’s agenda was an intensification of the

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51 “Harris wins Ontario election,” *Maclean’s*, accessed May 3, 2017, <http://www.encyclopediecanadienne.ca/fr/article/harris-wins-ontario-election-en-anglais-seulement/>.

52 *Ibid.*

53 *Ibid.*

groundwork laid by the previous NDP government.

## Anti-Worker Legislation

THE PC GOVERNMENT was quick to implement its anti-worker agenda. For instance, the Pay Equity Act was repealed in 1995 despite the open and transparent consultation process, weak language in the Act and exemptions for small business. The PC government also required companies that complied with the 1994 legislation to destroy their files.<sup>54</sup> Many within the NDP suggested that the backlash to the Pay Equity Act and its repeal was related to the consultation process. For example, Winnie Ng, former Executive Assistant/Senior Policy Advisor to the Minister of Citizenship during the NDP years, suggested that the lengthy consultation process weakened the capacity of the legislation to withstand repeal. Furthermore, Rosario Marchese, former Ontario NDP Chair of the Standing Committee on the Administration of Justice, suggested that there should have been a greater emphasis on education and less of a focus on consultations. In his mind, the consultation process created a sense of fear and alarm among the population.<sup>55</sup>

On November 29, 1995, the PC government introduced Bill 26, the omnibus Savings and Restructuring Act. The Bill amended forty-four statutes, created three acts and deleted two. With regard to labour, the Bill weakened pension rights and pay equity settlements, and it “diluted the power of arbitration for those Ontario public sector workers who didn’t have the right to strike and who had instead relied on that mechanism to negotiate contracts.”<sup>56</sup>

During this period, workers’ compensation was modified to the detriment of working people. For instance, temporary benefits were eliminated and the fundamentally flawed return-to-work program was implemented. In addition, there was a greater reliance on experience rating, and employer assessment rates were lowered. These changes altered the Meredith-based Workers’ Compensation system beyond rec-

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54 Linda Silver Dranoff, “Women have a big stake in this federal election,” *The Globe and Mail*, last modified April 8, 2009, <https://www.theglobeandmail.com/opinion/linda-silver-dranoff/article1134482/>.

55 Abigail B. Bakan and Audrey Kobayashi, “Affirmative Action and Employment Equity: Policy and Ideology in Canadian Context,” *Canadian Political Science Association*, 9-10, accessed on April 28, 2017, <https://www.cpsa-acsp.ca/papers-2005/Bakan.pdf>.

56 Kirsten Kozolanka, *The Power of Persuasion: The Politics of the New Right in Ontario*, (Montreal: Black Rose Books, 2007), 133.

ognition.<sup>57</sup> In 1998, the government passed the Workplace Safety and Insurance Act and repealed previous legislation. Moreover, the Worker's Compensation Board was dissolved and replaced by the Workplace Safety and Insurance Board (WSIB).

These changes over the last 20 years have led to undesirable outcomes for injured workers: 1. benefits have been scaled back and/or terminated as workers are deemed able to work; 2. increasing tendency to deny and challenge claims; and 3. new “pre-existing” injuries and illnesses are being “discovered.”<sup>58</sup> Ultimately, more and more injured workers are left in poverty while many others are forced back to work prior to full recovery.

### Labour Law Regression: Bill 7

A KEY PLATFORM plank of the PC Party from the 1995 election was to repeal Bill 40. The delivery of this campaign promise was initiated shortly after the election on August 8, 1995 when the Minister of Labour outlined proposed changes to labour law in the province. Less than two months later, on October 4, the government introduced Bill 7 (the Labour Relations Employment Statute Law Amendment: An Act to Restore Balance and Stability to Labour Relations and to Promote Economic Prosperity). Bill 7 passed Second Reading on October 26, Third Reading on October 31, and it received Royal Assent on November 10—only five months after the election. The entire process took three months, compared to over two years for the NDP's Bill 40.<sup>59</sup> There were no meaningful public consultations during this process as the PC government steamrolled the Bill through the legislature. Furthermore, not only did Bill 7 repeal Bill 40, it also included retroactive components that undid decades of established labour law practices that had been accepted by the NDP, Liberals and formerly by the PC Party. Bill 7 also repealed Bill 91 (the Agricultural Labour Relations Act) in its entirety.<sup>60</sup>

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57 Robert Storey and Carolann Elston, “Final Report of the Revived Sir William Meredith Royal Commission,” *Injured Workers Online*, (2015): 8, [http://injuredworkersonline.org/wp-content/uploads/2017/02/Revived\\_Meredith\\_Commission\\_Final\\_Report\\_June\\_1.pdf](http://injuredworkersonline.org/wp-content/uploads/2017/02/Revived_Meredith_Commission_Final_Report_June_1.pdf).

58 *Ibid.*, 12.

59 Harish C. Jain and S. Muthuchidambaram, “Ontario Labour Law Reforms: A Comparative Study of Bill 40 and Bill 7,” *Canadian Labour Law and Employment Journal* 31(1), no. 4 (1996): 320-321.

60 Ontario, “Legislative Assembly Debates,” Honourable Elizabeth Witmer, October 31, 1995, [http://www.ontla.on.ca/web/house-proceedings/house\\_detail.do?Date=1995-10-31&Parl=36&Sess=1&locale=en#P139\\_39865](http://www.ontla.on.ca/web/house-proceedings/house_detail.do?Date=1995-10-31&Parl=36&Sess=1&locale=en#P139_39865).

Bill 40 replaced the long-standing card check certification system with the American-style

*mandatory vote system.*<sup>61</sup> *The PC government and business groups justified the transition to the mandatory vote system by suggesting that it enhances “workplace democracy,” despite the disproportionate influence bosses wield over their employees. This disproportionate influence means that the comparison between a workplace election and a political election is a false one.*<sup>62</sup> *Moreover, Bill 7 made certification drives more difficult and the decertification process easier. For instance, there was now a 40% threshold of support required to trigger a representation vote, whereas the number was as low as 35% prior to Bill 7. The higher threshold was specifically for applications in which a pre-hearing vote was requested. Furthermore, the Board had the ability to use its discretion in deciding whether to bar a certification application by a union for a specific amount of time. Under Bill 7, a mandatory 12-month bar against a union would be imposed if the certification was dismissed or withdrawn after a representation vote.*<sup>63</sup>

Unsurprisingly, the threshold to trigger a decertification vote was lowered from 45% to 40%. Under these circumstances, the Board would hold a vote when it appeared that 40% of employees in the bargaining unit had expressed their desire to decertify. Only the employee who initiated the decertification vote had the ability to provide the Board information regarding the number of people in the unit. For an unsuccessful decertification vote, there was no one-year ban on subsequent decertification votes, unlike the one-year ban imposed following the failure of a certification vote. Automatic certification was still available in the event of unfair labour practices; however, additional requirements had to be met.<sup>64</sup>

The government’s purpose and rationale for Bill 7 was to restore “balance to labour relations,” “enhance democracy in the workplace,” and to place a greater emphasis on the individual worker instead of the trade union. Furthermore, the purpose clause emphasized “adaption

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61 Harish C. Jain and S. Muthuchidambaram, “Ontario Labour Law Reforms: A Comparative Study of Bill 40 and Bill 7,” *Canadian Labour Law and Employment Journal* 31(1), no. 4 (1996): 323.

62 *Ibid.*, 323.

63 *Ibid.*, 324.

64 Harish C. Jain and S. Muthuchidambaram, “Ontario Labour Law Reforms: A Comparative Study of Bill 40 and Bill 7,” *Canadian Labour Law and Employment Journal* 31(1), no. 4 (1996): 325.

to change; promotion of flexibility, productivity, employee [not union] involvement in the workplace; the encouragement of communication between employers and employees [with no reference to unions]; and economic growth.”<sup>65</sup> Despite the above-mentioned rationale, the Bill “effectively [banned] significant segments of the workforce from even having access to collective bargaining rights, and indeed [stripped] employees and bargaining agents of existing rights.”<sup>66</sup> Lawyer Bernard Fishbein poignantly stated that “workplace democracy is like family values. Who is opposed to that? But does it mean employees on boards of directors or that they get votes on plant closure? No, it’s just an ability to impede organizing under the guise of another name.”<sup>67</sup>

The PCs also argued that with the new Bill, Ontario would once again be open for business and attract investment, as in their eyes, Bill 40 effectively shut down the economy. Regardless of these assertions, during the life of Bill 40 (1993–1995), the available evidence indicates that the law worked well,<sup>68</sup> as certifications increased, certification processes were sped up, time in litigation was reduced and industrial conflicts declined. With regard to the economy, the forewarned apocalypse did not materialize as predicted by the chorus of voices from the business community and corporate media, as exports increased by 20%, investment in machinery and equipment rose by \$8 billion, 168,000 new jobs were created and Ontario’s economy grew by 5.5% , the highest among G-7 nations.<sup>69</sup>

Both opposition parties opposed Bill 7 on procedural grounds, due to the lack of public consultations and debate. With that being said, the NDP emphasized ideological opposition to the Bill more so than the Liberal Party. Welland-Thorold MPP Peter Kormos demonstrated the NDP’s opposition to the Bill when he stated that “we’ve seen thugs lately, Chair. We’ve seen the thuggery of a government that permits the most modest debate on one of the most substantial pieces of legislation, legislation that rolls us back into the previous century as we now face entry into the next millennium.”<sup>70</sup> The Liberals were in favour

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65 Ibid, 314.

66 Ibid, 326.

67 Ibid, 326-327.

68 Harish C. Jain and S. Muthuchidambaram, “Ontario Labour Law Reforms: A Comparative Study of Bill 40 and Bill 7,” *Canadian Labour Law and Employment Journal* 31(1), no. 4 (1996): 327.

69 Ibid, 327.

70 Ontario, “Legislative Assembly Debates,” MPP Peter Kormos, October 31, 1995, <http://www.ontla.on.ca/web/>

of repealing Bill 91,<sup>71</sup> as the party held many seats in rural Ontario where agriculture is prevalent.

Unsurprisingly, the labour movement was staunchly opposed to Bill 7. CAW leader Buzz Hargrove echoed the sentiment of workers in the CAW newsletter:

*Hargrove dubbed the Tories' anti-worker Bill 7 labour law 'a bill to destroy the rights of working people and their unions.' The new law rolls back many of the gains of workers by more than 50 years. But it was passed into law just three-and-a-half weeks after it was introduced in the Ontario legislature. The Tories forced it through without debate, without public hearings, without committee hearings, or consultation with the workplace parties. Hargrove said the Tories offered no proof to back their repeated claims that the NDP's Bill 40 labour law was a 'proven job killer'.<sup>72</sup>*

## Responses to the Bill

THE PC GOVERNMENT'S austerity agenda and anti-union legislation culminated in the Days of Action campaign, which was organized by the labour movement and community allies across the province in the mid-1990s. The Days of Action mobilized hundreds of thousands of people in numerous street marches and rallies. There was also direct action in the form of political strikes with workers walking off the job to protest government attacks.<sup>73</sup> Ultimately, the Days of Action campaign was unsuccessful in that it did not stop the government's agenda; however, it was successful in that the consciousness of workers was increased and solidarity was built between trade unions and community groups.

While the labour movement opposed the Bill, the business community and the corporate media rallied behind the legislation. Their support for the Bill was hypocritical: Only three years earlier, they had criticized the NDP government's Bill 40 process as not being transparent and having insufficient public consultation, even though that pro-

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house-proceedings/house\_detail.do?Date=1995-10-31&Parl=36&Sess=1&locale=en#P139\_39865.

71 Ibid, MPP Noble Villeneuve.

72 "Newsletter," *CAW.ca*, last modified December 18, 1995, <http://www.caw.ca/en/4500.htm>.

73 David Camfield, "The Character of Class Struggle in 1990s Ontario," *Graphic History Collective*, last modified November 5, 2014, <http://graphichistorycollective.com/books/drawn-to-change/doa>.

cess took over two years. Under the PC government's labour law reform, there was no review process or public consultations of any kind.

## Conclusion

THE POST-WORLD WAR Two (WWII) compromise between labour and capital that had previously been supported to varying degrees by all three major parties in Ontario was dismantled during PC rule as neo-liberalism became the dominant ideology in the province, shifting politics and discourse to the right. Bill 7 exemplified neoliberal orthodoxy with its overt attack on trade unions, collective bargaining rights and established labour law practices.

While the PC's decision to abandon a formal labour law review process was unprecedented, it is unlikely that a comprehensive labour law review process would have produced different results. Judith McCormack argued that "it would have taken a miracle, not a mediator, for there to be any degree of acceptance on the part of unions of the Conservative labour agenda, which among other things, was obviously designed to hinder unionization." Furthermore, the government "[identified] unions as its 'enemy', publicly [derided] 'union bosses', and [highlighted] declining union certifications and increasing decertifications in its speeches about its labour legislation."<sup>74</sup>

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74 Judith McCormack, "Comment on the 'Politicization of the Ontario Labour Relations Framework in the 1990s,'" *Canadian Labour and Employment Law Journal* 325, no. 7 (1999): 341-342.

# The Liberal Government and Bill 148

## 2003 Election

THE COMMON Sense Revolution was repudiated by voters on October 2, 2003, when the Liberals led by Dalton McGuinty were victorious in 72 of Ontario's 103 ridings. The PC's seat total declined from 56 when the election was called in September by then Premier Ernie Eves to 24 after the election. With only seven seats, the NDP under the leadership of Howard Hampton continued to not have official party status in the Ontario legislature.<sup>75</sup>

During the Liberals first decade in power, there was no review of labour laws similar to what took place under the NDP and PC governments. With that being said, there were changes brought forward by the Liberal Party. For instance, the card check system was restored for the construction industry, as many building and construction trade unions are fervent Liberal supporters, who in the past provided significant money to the Liberals via direct financial contributions.

## The Great Recession

GENERALLY SPEAKING, Ontario's economy performed reasonably well relative to other provinces in the early 2000s. However, the Great Recession, which lasted from 2007 until 2009, was the longest and deepest recession since the Great Depression, and affected millions of working class people. Wealth and income inequality continued to expand, wages for many stagnated, unemployment and poverty increased, the auto industry was on the verge of bankruptcy and many global financial institutions disappeared seemingly overnight. Governments in Canada responded by bailing out key industries, such as auto, and by implementing massive spending bills to stimulate the economy. The majority of economists agree that "had Ontario and governments around the world not stepped in to fill the gap, we would all be dealing with

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<sup>75</sup> Jay Makarenko. "2003 Ontario General Election", *Mapleleafweb.com*, last modified September 1, 2003, <https://www.mapleleafweb.com/features/2003-ontario-general-election.html>

an economic depression of breathtaking proportions.”<sup>76</sup> Despite the prevention of a likely depression and the fact that Canada’s economy fared slightly better than our neighbours to the south, the exodus of manufacturing jobs intensified in the past ten years. Indeed, in July of 2007, there were 1.94 million people employed in Canada’s manufacturing sector compared to 1.73 million in February of 2017. That represents a decline of 11% in about ten years.<sup>77</sup> Mass austerity has also been inflicted on working people in the province with the slashing of funding for health care and education.<sup>78</sup> During this period, public sector workers were also forced to take a multi-year wage freeze, and anti-union legislation such as Bill 115 (the Putting Students First Act) was introduced to limit strike activity and impose a contract on education workers without negotiations.<sup>79</sup>

McGuinty eventually stepped down as Premier in 2013 due to the gas plant, eHealth, and Ornge scandals and because of the disputes between the government and the public sector unions. He was replaced by Kathleen Wynne. Wynne and the Liberals were successful in the 2014 election, after a campaign that saw PC leader Tim Hudak plan to slash 100,000 public sector jobs and potentially introduce right-to-work (for less) legislation. Under Wynne’s Liberals, hydro rates have continued to skyrocket and Hydro One has been partially privatized, massive health care cuts and hospital closures continue, and there has been the establishment of a basic income pilot program in the province. Due to the scandals, hydro rate increases, and healthcare cuts, the Liberals remain widely unpopular.

## Resistance to Neoliberalism

SINCE THE GREAT Recession began in 2007, resistance to neoliberalism has grown across the globe. One such manifestation is the Fight for

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76 Hugh Mackenzie, “Steering Ontario Out Of Recession,” *Canadian Centre for Policy Alternatives*, 2, last modified March 2010, [https://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/OAB2010\\_Steering%20Ontario%20Out%20of%20Recession.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/OAB2010_Steering%20Ontario%20Out%20of%20Recession.pdf).

77 Daniel Tencer, “Canadian Factories Finally Recover From Great Recession, With 210,000 Fewer Jobs,” *Huffington Post*, last modified March 17, 2016, [http://www.huffingtonpost.ca/2016/03/17/canadian-manufacturing-sales-record-high\\_n\\_9485968.html](http://www.huffingtonpost.ca/2016/03/17/canadian-manufacturing-sales-record-high_n_9485968.html).

78 Kelly Grant, “Ontario budget continues hard line on health care in bid to tackle deficit,” *The Globe and Mail*, last modified April 23, 2015, <https://www.theglobeandmail.com/news/national/ontario-budget-continues-hard-line-on-health-care-in-bid-to-tackle-deficit/article24094494/>.

79 Ben Sichel, “There is no substitute for solidarity,” *Rank and File*, last modified June 23, 2016, <http://rankandfile.ca/there-is-no-substitute-for-solidarity/>.

\$15 (FF\$15) and Fairness campaign which first developed in the United States and which subsequently emerged in Ontario in 2013-2014. According to campaign organizer, David Bush:

*Workers who launched the Fight for \$15 and Fairness picked \$15 and other goals because they seemed bold enough to inspire people to action, achievable enough to produce victories and universal enough to connect with movements across the globe. When the campaign started a common refrain many people heard when out petitioning was these sound like good ideas, but we will never achieve them. This reaction was the product of years of defeats weathered by the working class. After constantly organizing and fighting for two years the campaign has put these demands on the political map and made them popular. The latest forum poll shows 70% of Torontonians favouring a \$15 minimum wage. Across the country, with the existence of campaigns in almost every province, the latest poll showed 63% of Canadians in support of a \$15 minimum wage.<sup>80</sup>*

Importantly, the FF\$15 campaign has forged relationships between unions, non-union workers, student groups, faith groups and health care advocates. An alliance between the campaign and the OFL's Make It Fair campaign also emerged, leading to coordinated actions, lobbies and protests on a larger scale. Strategically, the FF\$15 campaign treated the Changing Workplaces Review as a form of collective bargaining; non-union workers have limited leverage to negotiate with employers, but workers can bargain with the state if they are mobilized. The campaign's success in shifting the debate to the left and pressuring the Liberals to develop pro-labour reforms is a testament to grassroots mobilizing that can deliver results.<sup>81</sup>

## Labour Law Review

THE LIBERAL THRONE Speech on July 3, 2014, contained statements indicating that the government would address the problem of precarious work in the province. Consequently, Wynne initiated the labour law review process on September 24, 2014, when a mandate letter was

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<sup>80</sup> David Bush, "\$15 and Fairness shakes up Ontario," *Canadian Dimension*, last modified June 13, 2017, <https://canadian-dimension.com/articles/view/15-and-fairness-shakes-up-ontario>.

<sup>81</sup> Ibid.

sent from her office to the Minister of Labour, Kevin Flynn. The overarching priority outlined in the mandate letter was to lead “a review of Ontario’s system of employment and labour standards.” Flynn was directed to “work with other ministers to consider reforms that reflect the realities of the modern economy, such as the rise of non-standard employment and the reduction in the prevalence of employer benefits and training.”<sup>82</sup> Furthermore, other priorities included the need to develop a wage gap strategy, to protect vulnerable migrant workers, to promote occupational health and safety, to support mental health in the workplace and to collaborate on collective bargaining.<sup>83</sup> The Liberals sought to review and amend the Employment Standards Act (ESA) and the OLRA, unlike the NDP and PC governments which focused primarily on the OLRA.

On February 17, 2015, the Changing Workplaces Review process began when the government appointed two Special Advisors, C. Michael Mitchell and John C. Murray to lead public consultations and provide the Minister with recommendations:

*The advisors will provide guidance on the engagement process and solicit input from the public by participating in regional consultations, holding targeted stakeholder meetings and soliciting written submissions. They will also examine academic and inter-jurisdictional research on the changing workplace.*<sup>84</sup>

In appointing the Special Advisors, the Minister provided the mandate for the review:

*The Changing Workplaces Review will consider the broader issues affecting the workplace and assess how the current labour and employment law framework addresses these trends and issues with a focus on the LRA and the ESA. In particular, the Special Advisors will seek to determine what changes, if any, should be made to the legislation in light of the changing nature of the workforce, the workplace, and the economy itself, particularly in light of relevant trends and factors operating on our society, including, globalization, trade*

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82 Kathleen Wynne, “2014 Mandate letter: Labour,” *Ontario*, last modified September 24, 2015, <https://www.ontario.ca/page/2014-mandate-letter-labour>.

83 *Ibid.*

84 Ministry of Labour, “Backgrounder: Ontario Appoints Special Advisors For Changing Workplaces Consultations,” *News Ontario*, last modified February 17, 2015, <https://news.ontario.ca/mol/en/2015/02/ontario-appoints-special-advisors-for-changing-workplaces-consultations.html>.

*liberalization, technological change, the growth of the service sector, and changes in the prevalence and characteristics of standard employment relationships.*<sup>85</sup>

More specifically, according to the government, the review was to “consider issues brought about in part by the growth of precarious employment.”<sup>86</sup>

Labour and management were both represented with the Liberals’ two Special Advisors. C. Michael Mitchell “was a Senior Partner at Sack Goldblatt Mitchell LLP, an Ontario law firm that specializes in labour and employment law. He practiced law for more than 37 years.” John C. Murray was “a founding managing partner and Chair of the Toronto litigation firm Genest Murray. As a practitioner, Murray regularly provided legal advice to major private and public sector corporations along with public sector institutions such as universities and hospitals.”<sup>87</sup> The Liberal approach with regard to the appointment of the Special Advisors appeased organized labour and organized business as neither side offered criticisms of the appointees.

On July 27, 2016, the Special Advisors’ 312-page interim report was released. The report was informed by 300 written submissions and the over 200 organizations and individuals that presented during the 12 days of public hearings held across the province. The majority of presentations were by individual workers, trade union representatives and anti-poverty advocates. The report was “comprised of 5 Chapters: Chapter 1 (Introduction), Chapter 2 (Guiding Principles, Values and Objectives), Chapter 3 (Changing Pressures and Trends), Chapter 4 (Labour Relations) and Chapter 5 (Employment Standards).”<sup>88</sup> According to the Special Advisors:

*The scope of our Review is very broad and, while we intend to deal with a variety of matters, in keeping with our mandate, our key focus will be on vulnerable workers in precarious jobs and the need for*

85 Ministry of Labour, “The Changing Workplaces Review – Summary Report,” *Ontario*, last modified July 2016, <https://www.ontario.ca/page/changing-workplaces-review-summary-report>.

86 Ministry of Labour, “The Changing Workplaces Review Final Report and Summary Released,” *Ministry of Labour*, last modified May, 2017, <https://www.labour.gov.on.ca/english/about/workplace/>.

87 Ministry of Labour, “Backgrounder: Ontario Appoints Special Advisors For Changing Workplaces Consultations,” *News Ontario*, last modified February 17, 2015, <https://news.ontario.ca/mol/en/2015/02/ontario-appoints-special-advisors-for-changing-workplaces-consultations.html>.

88 C. Michael Mitchell and John C. Murray, “Chapter 1 – Introduction,” *Ministry of Labour*, last modified July, 2016, [https://www.labour.gov.on.ca/english/about/cwr\\_interim/chapter\\_1.php](https://www.labour.gov.on.ca/english/about/cwr_interim/chapter_1.php).

*legislative amendments to address some of the issues facing these workers. At the same time, we will be mindful of the interests of employers and the potential impact of any proposed change and will carefully consider changes being sought by employers that could impact employees.*<sup>89</sup>

Within the interim report were approximately 50 issues and over 225 options for further consultation.<sup>90</sup> This report laid out multiple options of various policy issues, including diametrically opposed proposals from business and labour. The Special Advisors stated that so many options were included in the interim report because they wanted to allow for more consultation from the public. Indeed, they accepted responses from the public until the end of 2016.<sup>91</sup>

The Special Advisors acknowledged that changes in the workplace had led to deteriorating conditions for many workers. Nonetheless, they suggested that, “the mandate from the Minister of Labour to recommend changes that will support business is recognition that change cannot take place without taking into account its impact on business and that keeping the economy strong is a priority for everyone.”<sup>92</sup> This approach influenced the extent and content of the recommendations.

In their interim report, Mitchell and Murray summarized the key arguments presented by labour and business. Business argued that the economy is highly competitive, dynamic and ever-changing, meaning that business must be adaptive and flexible to maintain market share. It was also argued by business that many employers provide “good jobs” that consist of decent wages, benefits and working conditions. However, business acknowledged that there are many vulnerable workers and precarious “bad jobs.” The central concern of business was that “good” employers were going to be punished because of “bad” employers, which would result in higher costs and competitive problems for their respective businesses. The Special Advisors suggested that the most significant employer concerns related to hours of work, limitations on scheduling and the complexity of the ESA. Larger businesses

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89 Ibid.

90 Ministry of Labour, “The Changing Workplaces Review Final Report and Summary Released,” *Ministry of Labour*, last modified May, 2017, <https://www.labour.gov.on.ca/english/about/workplace/>.

91 C. Michael Mitchell and John C. Murray, “Chapter 1 – Introduction,” *Ministry of Labour*, last modified July, 2016, [https://www.labour.gov.on.ca/english/about/cwr\\_interim/chapter\\_1.php](https://www.labour.gov.on.ca/english/about/cwr_interim/chapter_1.php).

92 Ibid.

expressed their concerns pertaining to personal emergency leave provisions. In many instances, business was supportive of increased penalties and fines for employers that do not comply with the law. With regard to the OLRA, business was unequivocally opposed to any updates and expanded rights for trade unions. To summarize, business argued that legislative change of virtually any sort would impede their profit margins and, therefore, stifle their competitiveness and ability to create new jobs. Further, business was strongly opposed to any legislative reforms in which the government would restrict their workplace powers.<sup>93</sup> These were the same concerns expressed during the NDP's labour law review process. So, business advocated essentially for status quo with some increased enforcement powers for the Ministry.

Beyond employers, however, views were very different:

*On the other hand, worker advocates, unions, many non-government organizations, policy institutes, academics and individuals see in the current situation of vulnerable and precarious workers an urgent and serious threat to the well-being, not only of a significant number of workers in Ontario, but also to their families and to Ontario society. There is widespread agreement in this group that significant and growing numbers of workers—particularly women (but also increasing numbers of men), members of racial and ethnic minorities, immigrants, youth—are working in low wage jobs, many of them temporary, many of them unstable with little or no security, and mostly without benefits. They argue this is occurring in many retail businesses and in service industries such as food service, home care, child-care, and custodial services as well as in agriculture and for the increasing number of workers working through temporary help agencies in manufacturing.*<sup>94</sup>

These groups and individuals argued that workers in precarious jobs are at the mercy of their employers who do not take workers' lives into account when making decisions. Ultimately, these conditions lead to social isolation and interfere with workers' ability to establish committed relationships and/or to have children. It was stated that "the combination of low income, uncertainty, lack of control over scheduling, lack of benefits such as sick leave, and stress... create great anxiety in many

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93 C. Michael Mitchell and John C. Murray, "Chapter 1 – Introduction," *Ministry of Labour*, last modified July, 2016, [https://www.labour.gov.on.ca/english/about/cwr\\_interim/chapter\\_1.php](https://www.labour.gov.on.ca/english/about/cwr_interim/chapter_1.php).

94 C. Michael Mitchell and John C. Murray, "Chapter 1 – Introduction," *Ministry of Labour*, last modified July, 2016, [https://www.labour.gov.on.ca/english/about/cwr\\_interim/chapter\\_1.php](https://www.labour.gov.on.ca/english/about/cwr_interim/chapter_1.php).

workers and their families. Many assert that this results in a disproportionately high level of mental health issues in this population as well as deterioration in their overall physical health.”<sup>95</sup>

It was argued by workers representatives that the rise in self-employed individuals is indicative of an economy where there is a lack of good jobs. Further, it was said that deteriorating working conditions, wages and bargaining power are caused, at least in part, by a decline in unionization. The ESA was perceived to be ineffective for vulnerable employees as it lacks enforcement tools. The OLRA was seen to create barriers and obstacles to organizing workers.<sup>96</sup> In sum, workers and their organizations advocated for substantial reforms to both the ESA and OLRA to combat the proliferation of precarious work and the decline in trade union density.

On May 23, 2017, the Changing Workplaces Review Final Report was released, accompanied by a statement from Minister Flynn:

*Ontario’s economy is strong and growing. Our unemployment rate is the lowest it’s been in 16 years, and our GDP growth continues to lead all G7 countries. But with the rapid modernization of the workplace and new technology, people across Ontario are feeling less secure. We have heard from many people that they are no longer able to count on full-time, secure work to provide for themselves and their families. Many people work multiple jobs, on contract or in unstable positions with unreliable hours or pay.*

*What is clear to me, and to our government, after reading the report is that responsible change can ensure that every hard-working person in our province has the chance to reach their full potential.*

*Fairness and decency must continue to be the defining values of our workplaces. No person in Ontario should ever feel like they can’t get ahead.*<sup>97</sup>

Included in the Final Report were 173 proposed amendments to the ESA and OLRA. The report recommended the creation of a “Workplace Rights Act” that would combine the ESA, OLRA and the Occupational Health and Safety Act. There was no recommendation to raise the min-

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95 Ibid.

96 Ibid.

97 Kevin Flynn, “Statement from Minister Flynn on the Release of the Changing Workplaces Review Final Report,” *News Ontario*, last modified May 23, 2017, <https://news.ontario.ca/mol/en/2017/05/statement-from-minister-flynn-on-the-release-of-the-changing-workplaces-review-final-report.html>.

imum wage as that was not within the scope of the review.

Some of the recommendations regarding the ESA, included: increasing vacation time to three weeks after five years of service with the same employer; eliminating the 50-employee threshold for personal emergency leave and making it available to all employees; simplifying the public holiday pay provision; limiting differential pay for different groups of employees (part-time, casual, temporary, and full-time) except on objective grounds such as seniority and merit; eliminating exemptions relating to students; adding the term “dependent contractor” to the definition of “employee”; using a sector specific approach to scheduling; and increasing protection for temporary foreign workers who wish to enforce their rights.<sup>98</sup>

Some of the recommendations concerning the OLRA, included: expanding coverage to domestic workers, to members of the architectural, dental, land surveying, legal or medical professions and to agricultural and horticultural employees; preserving the mandatory vote system; allowing electronic membership evidence and electronic voting; consolidating and amending of bargaining units; enabling broader-based bargaining; increasing financial fines and penalties; eliminating the six-month period for striking employees to apply to return to work and providing for successor rights in the building services industries. Regarding inspections, some of the recommendations, included increasing the use of targeted inspections; transforming the Ministry of Labour into more of a law enforcement agency and increasing fines and penalties for contravening the law.<sup>99</sup>

## Labour Law Reform: Bill 148

ON MAY 30, 2017, the Liberals announced that the general minimum wage would increase to \$11.60/hr on October 1, 2017, to \$14.00/hr on January 1, 2018 and to \$15.00/hr on January 1, 2019,<sup>100</sup> an increase

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98 Yosie Saint-Cyr and Cristina Lavecchia, “Changing Workplaces Review Final Report: Sweeping Changes to Ontario Employment Law Coming,” *Slaw*, last modified May 25, 2017, <http://www.slw.ca/2017/05/25/changing-workplaces-review-final-report-sweeping-changes-to-ontario-employment-law-coming/>.

99 Yosie Saint-Cyr and Cristina Lavecchia, “Changing Workplaces Review Final Report: Sweeping Changes to Ontario Employment Law Coming,” *Slaw*, last modified May 25, 2017, <http://www.slw.ca/2017/05/25/changing-workplaces-review-final-report-sweeping-changes-to-ontario-employment-law-coming/>.

100 Ministry of Labour, “Backgrounder Proposed Changes to Ontario’s Employment and Labour Laws,” *News Ontario*, last modified May 30, 2017, <https://news.ontario.ca/mol/en/2017/05/proposed-changes-to-ontarios-employment-and-labour-laws.html>.

of 31.5% over 18 months. Throughout the labour law review process, the minimum wage was stated to be outside the scope of the Special Advisors' mandate. Therefore, many suggested that the push for the wage hike should have been abandoned and the focus should have been placed elsewhere. Nonetheless, the FF\$15 campaign continued to ramp up pressure with its petitions, rallies, educational activities and MPP visits. In the end, the minimum wage emerged as a pressing issue with widespread support, which led the Liberals to make the minimum wage announcement despite stating otherwise throughout the process.

On June 1, 2017, the Liberals introduced Bill 148, the Fair Workplaces, Better Jobs Act, 2017, to the legislature and it passed First Reading.<sup>101</sup> The proposed changes, included:

- increase the minimum wage on January 1, 2018, and again on January 1, 2019
- include Family Day as a designated public holiday
- amend the rules for the calculation of public holiday pay
- provide a minimum of three weeks' vacation entitlement to employees who have worked for five years or more for the same company
- provide an entitlement for equal pay for equal work, including an entitlement for assignment employees of temporary help agencies to receive equal pay where they perform substantially the same work as an employee of the agencies' clients
- increase the length of unpaid leaves of absence for family medical leave and crime-related child disappearance leave
- provide a new unpaid leave of absence if a child of an employee dies for any reason
- extend personal emergency leave entitlement to all employees, not just those of employers with 50 or more employees, and provide for two days of paid leave; employers would not be permitted to require a certificate from a qualified medical practitioner for these absences
- require temporary help agencies to provide assignment employees with one week's notice or pay in lieu in specified circumstances where an assignment with an estimated term of three or more months is ended before the expiration of the term
- amend the provision relating to notice of contravention to provide, among other things, that the amount of the penalty shall be deter-

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101 "Bill 148, Fair Workplaces, Better Jobs Act," *Ontario Legislative Assembly*, accessed June 4, 2017, [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=4963&detailPage=bills\\_detail\\_debates](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4963&detailPage=bills_detail_debates).

- mined in accordance with the regulations
- establish new provisions relating to collection.<sup>102</sup>

The proposed amendments to the OLRA, included:

- add a provision allowing a trade union to apply to the Ontario Labour Relations Board to direct an employer to provide the union with a list of the employer's employees
- for employees of specified industry employers (building services, home care, community services, temporary help agencies), provide an alternative process for certification of trade unions as bargaining units for those employees
- provide for first collective agreement mediation and first collective agreement mediation-arbitration
- establish rules governing the reinstatement of employees at the conclusion of a lawful strike or lock-out
- prohibit employers, during bargaining periods, from discharging or disciplining employees in an affected bargaining unit without just cause.<sup>103</sup>

On June 22, 2017, the Standing Committee on Finance and Economic Affairs met to determine the locations and dates for public consultations on Bill 148. The consultations took place in ten locations across the province. They began in Thunder Bay on July 10 and concluded at Queen's Park on July 21. Labour and business were well represented at the consultations.

Bill 148 passed Second Reading on October 18, 2017, Third Reading on November 22, 2017 and the Bill received Royal Assent on November 27, 2018. Since November 27, 2017, employers can no longer require that workers use footwear with an elevated heel, unless the footwear is required to ensure safety. This change modified the Occupational Health and Safety Act. Also, since November 27, 2017, employers are prohibited from misclassifying employees as independent contractors. The onus is now on employers to prove that the worker is not an employee.<sup>104</sup>

102 Pamela M. Hillen, "Ontario Tables Bill to Amend Employment and Labour Laws," *Hicks Morley*, last modified June 1, 2017, <https://hicksmorley.com/2017/06/01/ontario-tables-bill-to-amend-employment-and-labour-laws/>.

103 Pamela M. Hillen, "Ontario Tables Bill to Amend Employment and Labour Laws," *Hicks Morley*, last modified June 1, 2017, <https://hicksmorley.com/2017/06/01/ontario-tables-bill-to-amend-employment-and-labour-laws/>.

104 "We organized, we won, now we enforce," *Workers Action Centre*, Accessed on April 6, 2018, <http://workers->

The key provisions in Bill 148 pertaining to the ESA, include:

- **Minimum Wage:** the general minimum wage increased to \$14.00/hr on January 1, 2018, and will increase to \$15.00/hr on January 1, 2019, followed by annual increases at the inflation rate. The increase to \$15.00/hr will be a 30% increase for Ontario's 675,000 minimum wage workers. In total, 1.7 million workers will see a wage hike<sup>105</sup>;
- **Personal Emergency Leave (PEL):** The bill extends ten job protected PEL days to all workers in the province with the exception of those in the auto industry. Auto workers are only extended seven PEL days. Bill 148 mandates that two of the ten PEL days be paid. There is an exception for auto workers who will move forward with zero paid sick days. These provisions became enforceable on January 1, 2018;
- **Doctor's Sick Notes:** Employers are prohibited from asking for a doctor's sick note when a worker takes a PEL. This came into effect on January 1, 2018<sup>106</sup>;
- **Equal Pay:** Equal pay for part-time, temporary, casual and seasonal employees doing substantially the same job as full-time employees. In addition, there is now equal pay language for temporary help agency employees doing the same job as employees at the agencies' client companies.<sup>107</sup> Exceptions exist when based on seniority, merit or with systems that measure earnings by quantity or quality of production. This came into force on April 1, 2018<sup>108</sup>;
- **Vacation:** Three weeks vacation for employees who have been with the same employer for five years. This became law on January 1, 2018;
- **Domestic or Sexual Violence Leave:** This leave allows for up to seventeen weeks of job-protected time off when a worker or their child has experienced or is threatened with domestic or sexual violence. The first five days are paid.<sup>109</sup> This came into force on January 1, 2018;

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actioncentre.org/we-organized-we-won-now-we-enforce/.

105 Dave Bush and Doug Nesbitt, "Workers Win Big in Ontario," *Jacobin*, last modified November 22, 2017, <https://www.jacobinmag.com/2017/11/ontario-fight-for-15-fairness-campaign-labor-ndp-liberals>.

106 Ministry of Labour, "Ontario Passes Legislation to Create Fair Workplaces, Better Jobs," News Ontario, last modified November 22, 2017, <https://news.ontario.ca/mol/en/2017/11/ontario-passes-legislation-to-create-fair-workplaces-better-jobs.html>.

107 Ibid.

108 CUPE, "Summary of the Fair Workplaces, Better Jobs Act, 2017 (Bill 148)," *CUPE Ontario*, last modified December 2017, [https://cupe.on.ca/wp-content/uploads/2017/12/Summary\\_of\\_the\\_Fair\\_Workplaces\\_Better\\_Jobs\\_Act\\_2017.pdf](https://cupe.on.ca/wp-content/uploads/2017/12/Summary_of_the_Fair_Workplaces_Better_Jobs_Act_2017.pdf).

109 Ministry of Labour, "Ontario Passes Legislation to Create Fair Workplaces, Better Jobs," News Ontario, last

- **Public Holiday:** Family Day is now a statutory public holiday;
- **Enforcement:** The hiring of 175 employment standards officers by 2021<sup>110</sup>; and
- **Scheduling:** These changes will come into force on January 1, 2019. The law will require employers to pay workers three hours for each day they are on call, but are not called in. Employers will be required to pay wages to employees for three hours when their shift is cancelled within two days of the start time. Workers can also refuse last-minute shifts in certain circumstances.<sup>111</sup>

The key updates to the OLRA came into force on January 1, 2018 and, include:

- **Certification System:** The extension of card-check certification to the building services, temp agencies, and home care sectors;
- **Employee Lists:** Trade unions are now provided a list of employee names, phone numbers and emails when it can be demonstrated with evidence that at least 20% of employees are supportive of unionization;
- **Protections:** Just cause protection for employees to prevent against discharge or discipline between the time of a certification and the completion of the first collective agreement. This protection is also extended to employees from the time they are in a strike or lock-out position until a collective agreement is reached;
- **Successor rights** are now extended to the building services sector; and
- **Penalties:** The new penalties for violations are \$5,000 for individuals and \$100,000 for an organization.<sup>112</sup>

## Responses to the Bill

THE OFL SUGGESTED that Bill 148 contained some progressive elements; however, there were also said to be many half measures that

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modified November 22, 2017, <https://news.ontario.ca/mol/en/2017/11/ontario-passes-legislation-to-create-fair-workplaces-better-jobs.html>.

110 Ibid.

111 Ministry of Labour, "A plan for fair workplaces and better jobs (Bill 148)," *Ontario*, last modified March 21, 2018, <https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148>.

112 CUPE, "Summary of the Fair Workplaces, Better Jobs Act, 2017 (Bill 148)," *CUPE Ontario*, last modified December 2017, [https://cupe.on.ca/wp-content/uploads/2017/12/Summary\\_of\\_the\\_Fair\\_Workplaces\\_Better\\_Jobs\\_Act\\_-\\_2017.pdf](https://cupe.on.ca/wp-content/uploads/2017/12/Summary_of_the_Fair_Workplaces_Better_Jobs_Act_-_2017.pdf).

would not address the problems confronting workers in precarious jobs.<sup>113</sup> Moreover, many of the recommendations designed to strengthen the rights of workers were not included in the legislation, while some that were included were watered-down. For example, the card check certification amendment was sector-specific rather than universal. The numerous exceptions in the ESA were not addressed and workers in the agricultural sector continue to be denied collective bargaining rights. The response from workers and their advocates was expected because many of their proposals were not addressed in the Bill.

Organized business reacted to Bill 148 with outright opposition. The Ontario Chamber of Commerce repeatedly requested that Queen's Park conduct an economic impact analysis of the proposals prior to making legislative change. The Chamber continues to suggest that the provisions in Bill 148 will increase costs for business and make the province less competitive.<sup>114</sup> Additionally, Julie Kwiecinski, provincial affairs director with the Canadian Federation of Independent Business (CFIB), stated, "We are shocked and appalled that the government is broadsiding small business owners with a 32-per-cent increase in the minimum wage within only one-and-a-half years. Small businesses, who don't share the larger profit margins of big business, will be forced to make difficult choices."<sup>115</sup> These responses should not come as a surprise, considering the presentations business made to the Special Advisors.

To placate the business community, Wynne suggested that aid would be provided. The Chamber of Commerce took that opportunity to demand a reduction in the corporate tax rate to 10%, a reduction in the small business tax rate from 4.5% to 3% and other pro-business measures.<sup>116</sup> In November of 2017, the Liberals announced a tax cut for small businesses, from 4.5% to 3.5% along with other pro-business measures. Despite the tax cut, the business lobby has continued to engage in over-the-top campaigns and hyperbolic rhetoric suggest-

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113 Josh O'Kane and Justin Giovannetti, "What to expect as Ontario unveils new labour legislation," *The Globe and Mail*, last modified May 30, 2017, <https://www.theglobeandmail.com/news/national/what-to-expect-as-ontario-prepares-to-unveil-new-labour-legislation/article35145675/>.

114 Ibid.

115 "Overhaul of Ontario labour laws leave both business, worker groups unhappy," *Canadian Manufacturing*, last modified May 31, 2017, <http://www.canadianmanufacturing.com/human-resources/overhaul-ontario-labour-laws-leave-business-worker-groups-unhappy-194189/>.

116 Robert Benzie, "Chamber of commerce urges tax cuts for business as NDP Leader Andrea Horwath calls for beefed up labour reforms to help workers," *Toronto Star*, last modified on August 10, 2017, <https://www.thestar.com/news/queenspark/2017/08/10/ndp-leader-andrea-horwath-calls-for-beefed-up-labour-reforms-to-help-workers.html>.

ing that the minimum wage hike will cause economic catastrophe and drive business out of the province.

The response from the corporate media was disproportionately opposed to the reforms and the minimum wage hike. Nonetheless, traditionally Liberal supporting media outlets such as the CBC, Maclean's, and the Toronto Star, along with some local newspapers, published articles supportive of the reforms and increase to the minimum wage. The Globe and Mail and the Toronto Sun published opinion pieces that were supportive of the proposed changes.<sup>117</sup> Granted, these positive pieces were greatly outnumbered by anti-Bill 148 articles. In addition, there were also a number of articles published in the corporate media from the perspective of small business owners who supported the changes.<sup>118</sup> This included coverage of the Better Way Alliance, a coalition of businesses and non-profits which is supportive of living wages and decent working conditions.<sup>119</sup>

The support—albeit limited—for the labour law changes by sections of the corporate media was the result of three factors: 1. Campaigns like the FF\$15 and the OFL's Make It Fair, which were key in shifting public consciousness on issues such as growing wealth and income inequality, the need to increase the minimum wage and the need to improve working conditions. During the NDP's term in power, there was no such mobilization of working class people in support of Bill 40 or mass mobilization to defend Bill 40 against Harris and the PCs. 2. The Liberal Party has more support within the corporate media relative to the NDP and, therefore, has more leverage at times to push left-wing ideas that are traditionally supported by the NDP. 3. Overall, the provisions, especially those related to the OLRA, do not represent a significant departure from the status quo.

Criticisms from the NDP's base regarding the party's push to the

117 Anna Sharratt, "For low-income workers, Ontario's minimum wage hike is life changing," *The Globe and Mail*, last modified June 4, 2017, <https://beta.theglobeandmail.com/globe-investor/personal-finance/genymoney/for-low-income-employees-ontarios-minimum-wage-hike-is-a-good-start/article35199613/?ref=http://www.theglobeandmail.com>. Tarek Fatah, "Spare me the hysteria over minimum wage hikes," *Toronto Sun*, last modified July 11, 2017, <http://www.torontosun.com/2017/07/11/spare-me-the-hysteria-over-minimum-wage-hikes>.

118 John Laforet, "Small Businesses Can Survive Ontario's New \$15 Minimum Wage," *Huffington Post*, last modified May 31, 2017, [http://www.huffingtonpost.ca/john-laforet/ontario-minimum-wage-small-business\\_b\\_16899508.html](http://www.huffingtonpost.ca/john-laforet/ontario-minimum-wage-small-business_b_16899508.html). Jessica Carpinone, "Yes, it is possible to pay your workers a high minimum wage," *Ottawa Citizen*, last modified June 1, 2017, <http://ottawacitizen.com/opinion/columnists/carpinone-yes-it-is-possible-to-pay-your-workers-a-high-minimum-wage>.

119 Sara Mojtehdzadeh, "Business group discovers being good is good for business," *Toronto Star*, last modified April 4, 2017, <https://www.thestar.com/news/gta/2017/04/04/business-group-discovers-being-good-is-good-for-business.html>.

centre during the 2014 provincial election<sup>120</sup> and the growing momentum of the FF\$15 campaign forced the NDP to support the \$15.00/hr minimum wage in April of 2016. In the spring of 2017, the party came out in support of paid sick days; however, a specific number of days was not provided at that time. The party also announced support for card check certification and other OLRA reforms that would benefit organized labour.<sup>121</sup>

With that being said, the NDP's initial response to the introduction of the legislation was muted. Indeed, in June and July of 2017, the Bill did not seem to be at the top of the NDP's agenda, as the party was focused on the privatization of Hydro One, healthcare cuts, their proposed Pharmacare plan, and Liberal corruption. Rather than respond to attacks from business on the proposed minimum wage increase, leader Andrea Horwath expressed her dismay at the Liberals for stealing the NDP's ideas and implementing them in an ineffective manner.<sup>122</sup> The party also expressed its frustration with the Liberals "blindsiding small business" with the announcement to increase the minimum wage. This cozying up to small business is a continuation of recent Ontario NDP campaign strategies.

On August 10, 2017, over two months after the Bill was first introduced, Horwath disclosed the NDP's proposed amendments to the Bill. The central amendments included: a universal minimum wage for all workers, five paid emergency leave days and five unpaid emergency leave days per year (the Liberals plan was two paid emergency leave days and eight unpaid days), three weeks of vacation after one year of service (the Liberals proposal was three weeks after working for the same business for five years).<sup>123</sup>

The NDP remains supportive of a \$15.00/hr minimum wage during the 2018 provincial election campaign. Moreover, the party's platform includes free drug and dental coverage for all Ontarians, a pledge to cut hydro rates by 30%, and to tackle student debt by con-

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120 In the 2014 provincial election, the party supported a \$12.00/hr minimum wage and not the \$14.00/hr minimum wage demanded by activists.

121 David Bush, "\$15 and Fairness shakes up Ontario," *Canadian Dimension*, last modified June 13, 2017, <https://canadiandimension.com/articles/view/15-and-fairness-shakes-up-ontario>.

122 Jessica Smith Cross, "Ontario's Liberals 'stealing' NDP's ideas, says Horwath," *The Hamilton Spectator*, last modified June 8, 2017, <http://www.thespec.com/news-story/7358662-ontario-s-liberals-stealing-ndp-s-ideas-says-horwath/>.

123 Robert Benzie, "Chamber of commerce urges tax cuts for business as NDP Leader Andrea Horwath calls for beefed up labour reforms to help workers," *Toronto Star*, last modified on August 10, 2017, <https://www.thestar.com/news/queenspark/2017/08/10/ndp-leader-andrea-horwath-calls-for-beefed-up-labour-reforms-to-help-workers.html>.

verting loans to grants.<sup>124</sup> The 2018 platform is more progressive when compared to the party's platforms in 2011 and 2014. The party's shift away from the centre was the result of pressure and criticism from grassroots supporters. The shift was also a strategic decision in order to prevent the Liberals from outflanking the party to the left like in previous campaigns.

The PC Party never offered a comprehensive response to Bill 148. However, former PC Party leader Patrick Brown suggested that the \$15.00/hr minimum wage was too much and too soon. Brown also parroted the talking point from the Ontario Chamber of Commerce that suggested a cost-benefit analysis was required before significant changes could be made to the minimum wage.<sup>125</sup> Under Brown's leadership, the PC Party, similar to the NDP, focused on hydro rates, Liberal corruption, frivolous government spending and increased taxes. In January of 2018, Brown was forced to resign after allegations of sexual misconduct surfaced.

In March of 2018, PC Party members elected populist Doug Ford – brother of former Mayor of Toronto Rob Ford – as the new leader of the party. Under Ford's leadership, the party has no substantive platform and Ford will be limiting his engagement with the media to avoid campaign blunders that haunted the party in previous elections. To this point, Ford has suggested that the sex-ed curriculum would be repealed, that Ontario would quit the cap-and-trade market, that the CEO of Hydro One would be turfed (the Premier does not have the power to do this), and that the CBC would be defunded (federal issue). With regard to workers, Ford stated that he would cancel the January 1, 2019 increase in the minimum wage and that these workers would then be offered a tax credit. Researchers discovered that full-time workers earning the minimum wage at \$15.00/hr would make nearly \$700 more per year compared to workers whose wages would remain at \$14.00/hr and who would receive the tax credit.<sup>126</sup> Ford has also stated that

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124 New Democratic Party, "NDP Platform," *OntarioNDP.ca*, accessed April 25, 2018, <https://www.ontariondp.ca/platform>.

125 Robert Benzie, "Progressive Conservative's Patrick Brown warns \$15-an-hour is too much, too soon," *Toronto Star*, last modified May 31, 2017, <https://www.thestar.com/news/queenspark/2017/05/31/progressive-conservatives-patrick-brown-warns-15-an-hour-is-too-much-too-soon.html>.

126 Mike Crawley, "How Doug Ford's pledge of 'zero income tax' leaves minimum wage earners worse off," *CBC News*, Last modified April 18, 2018, <http://www.cbc.ca/news/canada/toronto/ontario-election-doug-ford-minimum-wage-income-tax-1.4623450>.

the provincial corporate tax rate would be reduced,<sup>127</sup> at a time when corporations would already be getting a break due to the cancellation of the minimum wage increase and when they are already making record-high profits.

## Conclusion

A COMPREHENSIVE labour law review process took place under the Liberal government. The reform process was first referenced during the Throne Speech on July 3, 2014, a comprehensive Bill was introduced to the legislature on June 1, 2017, and the Bill received Royal Assent on November 27, 2017. While many of the reforms sought by labour were watered-down or were noticeably absent, the Bill contained progressive amendments that have improved the material interests of working and middle class people. Some of the most important changes are: the minimum wage hike; equal pay for equal work; the extension of job-protected personal emergency leave days to nearly all workers, with two paid sick days; scheduling improvements; extension of card check to certain industries; and increased enforcement mechanisms and penalties for violators.

Throughout the labour law review process, the actions of the FF\$15 and organized labour helped to frame the issues and set the agenda. Had pressure not been applied by these groups, then the progressive changes would never have materialized. This is most apparent with the minimum wage. The FF\$15's tireless organizing and mobilizing increased public support for a wage hike, which led the Liberals to announce that the minimum wage would be raised to \$15.00/hr, despite suggesting that the wage was off the table during the Changing Workplaces Review. Furthermore, if the FF\$15 and organized labour slowed down or ended their campaigns once the Bill was first tabled, then the changes would likely have been watered-down or withdrawn in committee to appease the business lobby's fear mongering. Ultimately, the FF\$15 proves that a campaign which stays on message and connects with ordinary people can achieve meaningful results.

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<sup>127</sup> Greg Davis, "Doug Ford pledges corporate tax cut to boost manufacturing jobs in Cobourg campaign stop," *Global News*, last modified on April 18, 2018, <https://globalnews.ca/news/4152707/doug-ford-corporate-tax-cut-cobourg-campaign-stop/>.

# Summary and Next Steps

## Labour Law Review Processes in Ontario

THIS PAPER EXAMINED labour law review processes in Ontario since 1990. Three Bills were analyzed:

1. the NDP's Bill 40, which became law in 1993;
2. the PC's Bill 7, which became law in 1995; and
3. Bill 148, the Fair Workplaces, Better Jobs Act, 2017, which received Royal Assent on November 27, 2017.

THE NDP announced their intent to reform the OLRA in the Throne Speech on November 20, 1990. On March 8, 1991, an external tripartite committee consisting of three labour representatives, three management representatives and a neutral chair was established to review the OLRA and to report to the Minister of Labour. The two opposing sides filed reports with the Minister on April 19, 1991.

The union representatives' report was 95 pages long and contained over 60 proposals for reform while the management side's report advocated for status quo. Subsequently, a cabinet submission that included 60 proposals was prepared on August 7, 1991.

A few months later, in November of 1991, the NDP released a discussion paper which raised areas of reform and the government's preferred options. There were more than 20,000 copies of the discussion paper distributed and a three-month long consultation process ensued with the Minister and his aides receiving 447 written submissions. Bill 40 was tabled on June 4, 1992.

After the Second Reading, the all-party committee heard over 250 presentations in seven locations during August and September of 1992. Consequently, 55 amendments were included in the Bill. Bill 40 received Royal Assent on November 5, 1992 and came into force on January 1, 1993.

The entire process—from Throne Speech to becoming law—took just over two years. From the outset, business considered the process to be tainted and predetermined by labour. A barrage of ruthless media campaigns funded by the business lobby suggested that the proposed changes would destroy Ontario's economy. On the other hand, orga-

nized labour suggested that Bill 40 was a step in the right direction but did not go far enough. The Bill was only in existence for two and a half years before the PC government repealed it.

THE PC GOVERNMENT, elected in 1995, acted quickly to implement its anti-worker agenda. On August 8, 1995, the Minister of Labour outlined proposed changes to the OLRA. On October 4, the government introduced Bill 7. The Bill passed Second Reading on October 26, Third Reading on October 31, and it received Royal Assent on November 10. The entire process took three months, compared to over two years for the NDP's Bill 40.

The process excluded public consultations, as the PC government steamrolled the bill through the legislature. Even more troubling was the fact that not only did Bill 7 repeal Bill 40, it also included retroactive components that undid decades of established practices that had been accepted by all three major parties.

There was widespread support for Bill 7 within the business community, despite their criticisms of the NDP's review process, which was significantly more open and transparent. Unsurprisingly, the labour movement was staunchly opposed to Bill 7.

The PC government was able to steamroll Bill 7 through the legislature because the party had a strong mandate from the people of Ontario. That mandate included repealing Bill 40 and the Pay Equity Act, lowering taxes and balancing the budget. Furthermore, the period marked by the Common Sense Revolution was the high tide of neoliberalism in the province with the discourse shifting increasingly to the right.

The labour movement and working people remained divided over their views of the NDP and how to respond to the PC government. The division and disorganization prevented the labour movement from mobilizing to prevent the passing of Bill 7 in 1995. Twenty-three years later, many of the contents within Bill 7 remain the law in Ontario, despite the anti-democratic nature of this Bill. However, as alluded to previously, even if the PC government had developed a comprehensive review process, it is unlikely anything in the final piece of legislation would have changed due to the party's anti-union sentiments.

THE LIBERAL THRONE Speech on July 3, 2014 indicated that the gov-

ernment would address problems confronting workers in precarious jobs. Wynne initiated the labour law review process on September 24, 2014, when a mandate letter was sent from her office to the Minister of Labour, Kevin Flynn. The labour law review was to include the ESA and OLRA, unlike the previous two reviews that focused strictly on the OLRA.

The government appointed two Special Advisors—a labour lawyer and a management lawyer—on February 17, 2015 to lead public consultations and develop a report for the Minister of Labour. The Special Advisors released the 312-page interim report for the Changing Workplaces Review on July 26, 2016. The report referenced the 300 written submissions and the over 200 organizations and individuals that presented at the twelve days of public hearings held across the province.

Following this, the Special Advisors accepted feedback on the interim report until the end of 2016. The final report was released on May 23, 2017 and the government tabled legislation, Bill 148, on June 1, 2017. From July 10 to July 21, public consultations took place in ten communities across the province. Bill 148 passed Second Reading on October 18, 2017, Third Reading on November 22, 2017 and the Bill received Royal Assent on November 27, 2018.

The process—from Throne Speech to Royal Assent—took over three years. This labour law review process was the longest and the most comprehensive, as the ESA and OLRA were both reviewed, while with Bill 40 and Bill 7 only the OLRA was looked at.

Organized labour suggested that the Bill contained progressive provisions and it represented a step forward; however, many of the provisions were considered to be watered-down and many demands put forth by labour in the submissions were absent. Business reacted by suggesting that the increase to the minimum wage would adversely affect the economy and that the other proposals would impede the competitiveness of business.

Due to Bill 148, labour standards and the minimum wage will be a focus of the 2018 provincial election. This is an important development, because work and how it should be structured and organized will be discussed in detail and politicians will have to develop positions on these issues. For the first time in a generation, labour standards will be central to an election campaign in Ontario.

## Next Steps

AFTER ANALYZING the three labour law review processes, it is apparent that any process initiated by a government that aims to pass progressive change for workers will face an uphill battle. If the process is considered tainted or predetermined, it will be castigated by the corporate media and the business community. Similarly, if it is considered open, balanced and transparent, it will still be castigated by the corporate media and the business community. This is to be expected because changes to labour law deal with issues of power in the workplace. Business is unwilling to concede any powers to the state and/or workers without a fight.

### ***1. Strengthen the relationship between trade unions and the FF\$15 campaign***

In a few short years, the FF\$15 and the OFL's Make It Fair campaign, together with community organizations, have achieved tangible victories that will directly benefit over 1.5 million unionized and non-unionized workers in the province. One of the major victories of the FF\$15 has been its ability to shift public opinion towards supporting an increase to the minimum wage. Increased public support led the Liberals to include the minimum wage hike in their proposed legislation, despite years of rejecting the need to increase the minimum wage to \$15.00/hr. Importantly, the FF\$15 has garnered support among young and racialized workers and newcomers to Canada employed in the retail, food service and hospitality sectors. Trade unions have attempted to engage these groups for decades, often with little success. In addition, FF\$15 chapters have been established in numerous regions across Ontario as well as on university and college campuses. An offshoot of the FF\$15 was also created by healthcare professionals, and relationships have been forged between the campaign and faith communities. Moreover, the campaign also has the distinction of being an international one, as it initially began in the U.S., and has since influenced the development of movements and campaigns elsewhere across the globe. Internationalism is crucial to building resistance and fighting back against global forces that deepen inequality. Organized labour should fully endorse and promote the FF\$15 campaign, encourage members to get involved and provide financial resources so the

campaign can continue to advance. At the local level, labour councils should work in conjunction with the FF\$15. These groups can work together by organizing rallies at constituency offices, meeting with local MPPs, tabling at community events, and by knocking on doors. There is no sense in trying to reinvent the wheel when the groundwork for an effective campaign has been laid by the FF\$15.

## ***2. Election and Post-Election Strategy***

The PC Party leads the polls and will likely form the next government in Ontario, at which time many of the provisions in Bill 148 would be scrapped, similar to what the PC government did under Mike Harris in 1995. However, history need not repeat itself. In order to prevent many of the provisions in the Bill from being repealed, the OFL, affiliates, labour councils and groups like the FF\$15 must develop a comprehensive strategy to deal with the potential PC government. This strategy must be long term and not focus solely on the election. A positive and consistent message that focuses on how the provisions from Bill 148 benefit working class people will be important to ensure that the legislation is a central campaign issue.

Framing the issues along class lines will be paramount to expose Ford's anti-worker agenda. For instance, the PC government will look after the interests of big business by cutting corporate taxes, while rolling back gains for working and middle class people. This type of messaging will resonate with ordinary people much more than attacks on Ford's character or personality. Ultimately, if there continues to be widespread support for the minimum wage hike and other provisions contained in Bill 148, it will become increasingly difficult for the PC government to reverse these positive changes.

If the labour movement and its community allies do not develop a comprehensive strategy, it will result in the business lobby controlling the conversation, shifting it away from workers and towards the interests of business. One lesson to be learned from the Bill 40 and Bill 7 experiences during the 1990s is that a fractured and unorganized labour movement often leads to the election of reactionary governments that curtail union rights and roll back previously achieved victories. The labour movement cannot repeat the mistakes of the 1990s that led to the election of the PC Party, the repeal of Bill 40 and the implementation of Bill 7.

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## CLI Student Internship Program

This paper was prepared under the auspices of the Student Internship Program of the Canadian Labour Institute for Social and Economic Fairness.

The Institute provides support to graduate and senior undergraduate students of labour studies, political science, public policy and law so they may undertake research projects that will assist in the development of Canadian labour reform and in the promotion of progressive public policy.

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